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January 7, 1999

BY HAND DELIVERY

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

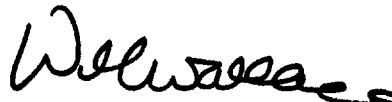
Re: MD Docket No. 98-200

Dear Ms. Salas:

Enclosed for filing in the above-referenced docket are an original and four copies of the Comments of L/Q Licensee, Inc. and Globalstar, L.P. Per the instructions of the December 4, 1998 Notice of Inquiry, a copy of the pleading on diskette has been submitted to Terry Johnson of the Office of Managing Director.

If you have any questions, please contact the undersigned.

Sincerely,



William D. Wallace

Enclosures

cc: Terry Johnson (with diskette)

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Assessment and Collection) MD Docket No. 98-200
Of Regulatory Fees for)
Fiscal Year 1999)
_____)

COMMENTS

Pursuant to Section 1.430 of the Commission's Rules, L/Q Licensee, Inc. ("LQL"), and Globalstar, L.P., submit these comments on the issues raised in the Notice of Inquiry, FCC 98-298 (released Dec. 4, 1998), in the above-referenced docket. Specifically, the Commission has requested comment on its standard for assessing regulatory fees on nongeostationary orbit ("NGSO") satellite systems. Notice, ¶ 11.

LQL is the licensee of the Globalstar™ Mobile-Satellite Service ("MSS") Above 1 GHz NGSO system.¹ Globalstar, L.P., a Delaware limited partnership, holds the right to offer capacity on the Globalstar system and owns and operates the international MSS business. Globalstar is also an applicant for NGSO satellite systems at 2 GHz and 40 GHz. Accordingly, both LQL and Globalstar have an interest in the regulatory fees established for NGSO satellite systems.

¹ See Loral/Qualcomm Partnership, L.P., 10 FCC Rcd 2333 (Int'l Bur. 1995).

Currently, the Commission requires an NGSO satellite system licensee to pay the NGSO regulatory fee for a fiscal year “upon the commencement of operation of a system’s first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to section [25.121(d)].”² In the Notice, the Commission noted that Orbital Communications Corporation (“Orbcomm”) recommended that all licensed NGSO satellite systems, whether or not they have operational satellites in orbit, should pay regulatory fees and contribute to the Commission’s regulatory costs, because licensed systems benefit from the Commission’s regulatory activities. Notice, ¶ 11.

LQL and Globalstar agree with Orbcomm that the Commission’s standard for assessing regulatory fees on NGSO satellite systems can be applied unfairly. On the one hand, as Orbcomm points out, there are regulatory activities which the Commission undertakes for NGSO satellite licensees (and applicants) which are not dependent upon the operator having one or more operational space stations in orbit: for example, international coordination and regulatory activities related to ITU spectrum allocations. A “licensed” system may obtain the benefit of these activities even though it is not yet obligated to pay the regulatory fee. Moreover, by the time an NGSO system is operational, there may be fewer regulatory activities undertaken by the Commission with a direct benefit to the system.

² Assessment and Collection of Regulatory Fees for Fiscal Year 1998, 12 CR 392, 436 (1998).

On the other hand, Section 159 of the Act primarily recovers regulatory fees from FCC licensees with operational facilities in a position to provide service to consumers.³ Yet, as the Commission has recognized, it is possible for an NGSO satellite licensee to pay a regulatory fee for a year in which it is not in a position to provide service.⁴ Thus, while most licensees can use a revenue stream to cover the cost of the fee, an NGSO satellite licensee may not have that capability. The inequity of this factor is aggravated by the extremely high level of the fee for NGSO satellite systems, over 400% greater than a TV broadcast licensee in a top 10 market for Fiscal Year 1998.⁵

Such an application of the regulatory fees to nonoperational NGSO systems appears inconsistent with the language of Section 159. Section 159 dictates that geostationary (“GSO”) satellite licensees be assessed fees on a “per operational station” basis. 47 U.S.C. § 159. When the Commission first adopted fees for GSO and NGSO satellite licensees, it recognized that a satellite in orbit was not necessarily “operational,” and that a satellite does not become “operational” until

³ Cf. Assessment and Collection of Regulatory Fees for Fiscal Year 1996 (NPRM), 11 FCC Rcd 16515, 16522 (1996) (noting that elimination of fee for broadcast construction permits would “eliminate the fee on stations that are not yet operational and producing income”).

⁴ See Assessment and Collection of Regulatory Fees for Fiscal Year 1996 (Report and Order), 11 FCC Rcd 18774, 18792 (1996).

⁵ See Assessment and Collection of Regulatory Fees for Fiscal Year 1998, 12 CR 392, Attach. F (\$37,575 for VHF TV station in markets 1-10; \$164,800 for NGSO systems).

the station is operating in conformity with the terms and conditions of its authorization.⁶

Regulatory fees for NGSO licensees are assessed on a “per system in low-earth orbit” basis. 47 U.S.C. § 159 (emphasis supplied). However, even though an NGSO “system” cannot generally become “operational” with one satellite, the Commission has interpreted the “per system” language in Section 159 for NGSO systems to mean any single “operational” satellite in-orbit.⁷ The Commission reasoned that an NGSO system is capable of providing commercial service before the entire constellation is operational.⁸ That reasoning, however, does not justify imposing a fee on those NGSO systems that cannot provide commercial service prior to the entire constellation becoming operational. As a result, these licensees are arbitrarily treated like operational GSO and NGSO systems even though they are situated differently.

LQL and Globalstar submit that the Commission should rectify these discrepancies by modifying the categories for assessing regulatory fees on NGSO satellite systems. See 47 U.S.C. § 159(b)(3). The statute requires that only

⁶ Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5364 (1994).

⁷ Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 11 FCC Rcd at 18792.

⁸ Id. The Commission’s generalization is not, in fact, accurate. Not all systems are capable of providing service with a partial constellation.

“operational” NGSO satellite systems should be assessed regulatory fees.⁹ If, despite the clear statutory language, the Commission insists on retaining its single operational satellite standard, it should at a minimum modify the regulatory fees applied to NGSO satellite licensees to reflect an existing distinction in Section 159, that is, broadcast stations that are under construction pay a fee that is significantly less than those that are operational.¹⁰

Using this distinction, the Commission could provide different categories of NGSO licensees subject to the regulatory fee. For example:

- A “licensed” NGSO system with one “operational” satellite would be assessed 25% of the total NGSO system fee;¹¹
- A licensed NGSO system that has all of its authorized system operational in orbit, or has begun commercial operations whether or not it has launched all of its authorized space stations, would be assessed at 100% of the total NGSO fee.

A fee schedule based on such categories would be more equitable and less arbitrary than the Commission’s current standard for NGSO systems. This fee structure would capture Orbcomm’s suggestion that those licensees that benefit from the Commission’s regulatory activities contribute to the budget for such

⁹ In the 1998 fee schedule, even the Commission specified the fee as “per operational system in non-geostationary orbit.” Assessment and Collection of Regulatory Fees for Fiscal Year 1998, 12 CR 392, Attach. F (emphasis supplied).

¹⁰ Cf. Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd 13512, 13536 (1995) (exercising authority to make permitted amendments to add a category for satellite TV construction permittees at a fee lower than that for construction permits for fully operational TV stations).

¹¹ Alternatively, this category could apply simply to NGSO satellite system “licensees” without regard to satellites in orbit.

activities. It would also be consistent with the intent of the statute that “operational” systems pay a full regulatory fee. Finally, the fee structure would be easy to administer because it is based on clear milestones in developing an NGSO satellite system.


For these reasons, LQL and Globalstar recommend that the Commission revise the standard for assessing regulatory fees on NGSO satellite systems consistent with the proposals above.

Respectfully submitted,

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